

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.15334 of 2005 (O&M)
Date of decision: December 5, 2006.

Ex.Hav. Ram Phal

...**Petitioner(s)**

v.

Union of India & Ors.

...**Respondent(s)**

Present: Shri R.S. Sangwan, Advocate for the petitioner.

Shri Aman Chaudhary, Advocate for the respondents.

Surya Kant, J. (Oral)

CM No.18693 of 2006

Notice to Mr. Aman Chaudhary, Learned Counsel for the respondents, who being present in court, accepts the same.

With the consent of Learned Counsel for the parties, the main case is taken on board for final disposal.

C.M. stands disposed of.

Re: Writ Petition

In this writ petition, the petitioner has sought quashing of the orders dated 6th May, 2005 (Annexure P-2) and 3rd August, 2005 (Annexure P-4) as also a writ in the nature of mandamus to command the respondents to grant him disability element pension @ 50% in terms of the instructions issued by the Govt. of India.

The facts may be noticed briefly.

The petitioner was enrolled in the Army as a Sepoy w.e.f. 24.2.1982; he was, however, discharged w.e.f. 1.6.1993 on medical grounds as the petitioner was found suffering from “Poly Arthrit”; at the time of his discharge, the medical board assessed the petitioner's disability @ 30% for life and consequently he was granted disability element pension @ 30%. There is no denial to the fact that the petitioner's disability continues to be at the same rate.

The Govt. of India, Ministry of Defence took a policy decision as contained in the instructions dated 31.1.2001 whereby the benefit of rounding off of the disability element pension has been provided. In terms of the said instructions, even if an ex-army personnel is suffering with less than 50% disability, his disability would be rounded off to 50% and he will be entitled to the disability element of pension on that basis. The aforesaid benefit, however, was restricted to those who were discharged from Indian Army on or after 1.1.1996.

Since the petitioner was discharged w.e.f. 1.6.1993, i.e. prior to 1.1.1996, his grievance is that the benefit of the aforesaid policy decision should be extended to him as well.

Learned Counsel for the parties are in agreement that the above stated controversy has since been resolved and answered in favour of the petitioner by a Division Bench of this Court vide judgment dated 17.8.2006 rendered in CWP No.9979 of 2005 (**Naib Sub. Ravinder Kumar v. Union of India & Ors.**), a copy of which has been placed on record as Annexure A-1.

In view of the fair stand taken by Learned Counsel for the respondents, noticed above, and for the reasons given by this Court in **Naib**

Sub. Ravinder Kumar's case (supra), this writ petition is allowed in the same terms; the impugned orders dated 6.5.2005 and 3.8.2005 (Annexures P-2 and P-4) are quashed to the extent that the petitioner is held entitled for the grant of disability element of pension @ 50% w.e.f. 1.1.1996. He will, however, be entitled to the arrears of the disability element pension for a period of 38 months preceding the date of filing of this writ petition only. The consequential benefits shall be released in favour of the petitioner within four months from the date of receipt of a certified copy of this order.

Disposed of.

December 5, 2006.
kadyan

[**Surya Kant**]
Judge